

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 57, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 140, line 5, delete "(c)".
- 2 Page 173, line 10, delete "IC 32-35-8" and insert "**IC 32-34-8**".
- 3 Page 173, line 30, delete "IC 32-35-8-18" and insert "**IC**
- 4 **32-34-8-18**".
- 5 Page 174, line 16, delete "IC 32-35-8," and insert "**IC 32-34-8**".
- 6 Page 174, line 20, delete "IC 32-35-8." and insert "**IC 32-34-8**".
- 7 Page 262, between lines 32 and 33, begin a new paragraph and
- 8 insert:
- 9 **"Sec. 20. The court's approval of a receiver's partial account or**
- 10 **report, as provided in section 14 of this chapter, releases and**
- 11 **discharges the receiver and the surety on the receiver's bond for all**
- 12 **matters and things related to or contained in the partial account or**
- 13 **report.**
- 14 **Sec. 21. Upon the:**
- 15 **(1) court's approval of the receiver's final account or report,**
- 16 **as provided in section 14 of this chapter; and**
- 17 **(2) receiver's performance and compliance with the court's**
- 18 **order made on the final report;**
- 19 **the receiver and the surety on the receiver's bond shall be fully and**
- 20 **finally discharged and the court shall declare the receivership**
- 21 **estate finally settled and closed subject to the right of appeal of the**

1 receiver or any creditor, shareholder, or other interested party
 2 who has filed objections or exceptions as provided in section 18 of
 3 this chapter.

4 **Sec. 22. (a) This section applies to any action, proceeding, or**
 5 **matter relating to or involving a receivership estate.**

6 **(b) Except as provided in subsections (c) and (d), a party to a**
 7 **proceeding described in subsection (a) is entitled to a change of**
 8 **judge or a change of venue from the county for the same reasons**
 9 **and upon the same terms and conditions under which a change of**
 10 **judge or a change of venue from the county is allowed in any civil**
 11 **action.**

12 **(c) This section does not authorize a change of venue from the**
 13 **county:**

14 **(1) concerning expenses allowed by the court incidental to the**
 15 **operation, management, or administration of the receivership**
 16 **estate;**

17 **(2) upon any petition or proceeding to remove a receiver; or**

18 **(3) upon the objections or exceptions to any partial or final**
 19 **account or report of any receiver.**

20 **(d) A change of venue is not allowed from the county of the**
 21 **administration of any receivership estate, or upon any petition or**
 22 **proceeding to remove a receiver, or upon objections or exceptions**
 23 **to a partial or final account or report of a receiver."**

24 Page 287, line 37, delete "9." and insert "**10.**".

25 Page 288, line 3, delete "10." and insert "**11.**".

26 Page 288, line 8, delete "11." and insert "**12.**".

27 Page 288, line 11, delete "12." and insert "**13.**".

28 Page 288, line 13, delete "13." and insert "**14.**".

29 Page 288, line 15, delete "14." and insert "**15.**".

30 Page 288, line 18, delete "15." and insert "**16.**".

31 Page 288, line 23, delete "16." and insert "**17.**".

32 Page 288, line 25, delete "17." and insert "**18.**".

33 Page 288, line 35, delete "18." and insert "**19.**".

34 Page 289, line 23, delete "19." and insert "**20.**".

35 Page 300, delete lines 28 through 39.

36 Delete pages 301 through 319.

37 Page 320, delete lines 1 through 9.

38 Page 320, line 10, delete "IC 32-33" and insert "IC 32-32".

- 1 Page 320, line 13, delete "33." and insert "**32.**".
- 2 Page 329, line 32, delete "IC 32-34" and insert "IC 32-33".
- 3 Page 329, line 35, delete "34." and insert "**33.**".
- 4 Page 345, line 29, delete "IC 32-34-9." and insert "**IC 32-33-9.**".
- 5 Page 359, line 22, delete "IC 32-36-2." and insert "**IC 32-35-2.**".
- 6 Page 360, line 2, delete "IC 32-35" and insert "IC 32-34".
- 7 Page 360, line 5, delete "35." and insert "**34.**".
- 8 Page 367, line 34, delete "IC 32-35-3." and insert "**IC 32-34-3.**".
- 9 Page 391, line 11, delete "IC 32-35-1-31." and insert "**IC**
- 10 **32-34-1-31.**".
- 11 Page 399, line 11, delete "9." and insert "**8.**".
- 12 Page 411, line 25, delete "IC 32-36" and insert "IC 32-35".
- 13 Page 411, line 28, delete "36." and insert "**35.**".
- 14 Page 419, line 26, delete "IC 32-37" and insert "IC 32-36".
- 15 Page 419, line 29, delete "37." and insert "**36.**".
- 16 Page 425, line 13, delete "IC 32-38" and insert "IC 32-37".
- 17 Page 425, line 16, delete "38." and insert "**37.**".
- 18 Page 428, line 35, delete "IC 32-35-1," and insert "**IC 32-34-1,**".
- 19 Page 429, line 14, delete "IC 32-35-1." and insert "**IC 32-34-1.**".
- 20 Page 433, delete lines 16 through 22.
- 21 Page 433, line 28, delete "IC 32-35-1." and insert "**IC 32-34-1.**".
- 22 Page 434, line 15, delete "IC 32-35-1." and insert "**IC 32-34-1.**".
- 23 Page 436, between lines 4 and 5, begin a new paragraph and insert:
- 24 "SECTION 39. IC 8-1-30-5, AS ADDED BY P.L.145-1999,
- 25 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 26 JULY 1, 2002]: Sec. 5. (a) As used in this section, "subject utility
- 27 company" refers to a utility company that is the subject of a finding by
- 28 the commission under section 4 of this chapter.
- 29 (b) If the commission makes a finding under section 4 of this
- 30 chapter, the commission may, after notice and hearing, make
- 31 appropriate orders to do any of the following:
- 32 (1) Provide for the acquisition of the subject utility company by
- 33 another utility company, a municipally owned utility, or by
- 34 another person that has the ability to operate the subject utility
- 35 company:
- 36 (A) in compliance with law and the commission's orders; and
- 37 (B) to remedy any deficiencies found by the commission.
- 38 (2) Provide for the appointment of a receiver to operate the

1 subject public utility:

2 (A) in compliance with law and the commission's orders; and

3 (B) to remedy any deficiencies found by the commission.

4 (c) Before making an order under subsection (b), the commission
5 shall give notice of the hearing to the following:

6 (1) The subject utility company.

7 (2) Other utility companies in Indiana.

8 (3) Appropriate public agencies and political subdivisions,
9 including all municipalities, located in the subject utility
10 company's service territory.

11 (d) An order under subsection (b)(1) must provide:

12 (1) that the person acquiring the subject utility company must pay
13 the fair market value of the subject utility company at the time of
14 acquisition; and

15 (2) the specific accounting methods and appraisal procedures and
16 terms by which the fair market value of the subject utility
17 company is to be determined.

18 (e) An order under subsection (b)(1) may provide cost recovery
19 mechanisms for costs associated with improvements to the acquired
20 system that are immediate and necessary to remedy deficiencies,
21 including any of the following:

22 (1) A mechanism for expediting any adjustments to the rate base
23 and rates of the person acquiring the subject utility company.

24 (2) Surcharges on customers of the acquired utility company
25 system to pay for extraordinary costs.

26 (3) A plan for deferring certain improvement costs and recovering
27 costs in phases.

28 (4) A plan for equalizing rates of the subject utility company with
29 the rates of the person acquiring the subject utility company, if
30 necessary.

31 (5) Other incentives to the person acquiring the subject utility
32 company, including adjustments to the allowed rate of return.

33 (f) If the commission makes an order under subsection (b)(2), the
34 attorney general shall file an action in a court with jurisdiction on
35 behalf of the commission for the appointment of a receiver under

36 ~~IC 34-48~~ **IC 32-30-5**. The receiver appointed by the court:

37 (1) has the same rights and duties under Indiana law as a utility
38 company providing water or sewer service; and

1 (2) shall continue to operate the subject utility company until the
2 court finds that the subject utility company:

3 (A) has the ability to comply and will comply with Indiana law
4 and the commission's orders relating to the operation of the
5 utility company; and

6 (B) has the ability to operate without any of the deficiencies
7 found by the commission.".

8 Page 445, line 9, delete "IC 32-35-1-33" and insert "**IC 32-34-1-33**".

9 Page 445, line 10, delete "IC 32-35-1-34." and insert "**IC**
10 **32-34-1-34**".

11 Page 450, line 4, delete "IC 32-34." and insert "**IC 32-33**".

12 Page 450, line 5, delete "IC 32-35-10." and insert "**IC 32-34-10**".

13 Page 450, between lines 20 and 21, begin a new paragraph and
14 insert:

15 "SECTION 58. IC 13-17-7-5 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. A private citizen, the
17 commissioner, the governor, or the attorney general may initiate a civil
18 action under:

19 (1) IC 13-14-10-2;

20 (2) IC 13-15-3-6;

21 (3) IC 13-17-4;

22 (4) IC 13-30-1-1 through IC 13-30-1-7;

23 (5) IC 13-30-3-2 through IC 13-30-3-9; or

24 (6) ~~IC 34-19-1-2~~; **IC 32-30-6-7**;

25 whichever is applicable, to enjoin or abate emissions resulting from the
26 operation of an existing emitting facility or source.".

27 Page 460, line 5, delete "IC 32-35-1-25." and insert "**IC**
28 **32-34-1-25**".

29 Page 461, line 28, delete "IC 32-35-1-25." and insert "**IC**
30 **32-34-1-25**".

31 Page 462, line 24, delete "IC 32-33." and insert "**IC 32-32**".

32 Page 463, line 7, delete "IC 32-34-14," and insert "**IC 32-33-14**".

33 Page 464, between lines 30 and 31, begin a new paragraph and
34 insert:

35 "SECTION 82. IC 26-3-7-31, AS AMENDED BY P.L.173-1999,
36 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2002]: Sec. 31. (a) Whenever it appears to the satisfaction of
38 the director that a licensee cannot meet the licensee's outstanding grain

obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

- (1) Cover the shortage with grain that is fully paid for.
- (2) Give additional bond, letter of credit, or cash deposit as required by the director.
- (3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with ~~IC 34-48-1~~ **IC 32-30-5** that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in ~~IC 34-48-1-2~~ **IC 32-30-5-2** may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments."

Page 465, line 4, delete "IC 32-35-1." and insert "**IC 32-34-1.**".

Page 470, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 85. IC 27-5-9-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) A receiver may be appointed for any ~~such~~ corporation under ~~IC 34-48-1~~. ~~In the event of the appointment of IC 32-30-5.~~

(b) If a receiver is appointed for any ~~such~~ corporation, ~~such the~~ receiver ~~shall be~~ is entitled to receive all securities of ~~such the~~ company deposited with the insurance commissioner. ~~And~~

(c) Receivers may be appointed by ~~the courts of this state~~ for foreign corporations doing business in ~~this state~~ **Indiana** under this chapter. ~~and such~~ **The** receivers ~~shall~~ have the right to the possession of any

securities of ~~such~~ **the** corporation in the hands of the commissioner.
~~And~~

(d) Receivers appointed under ~~the provisions of~~ this chapter shall collect or dispose of securities and pay out the funds realized ~~therefrom~~ **from the securities** as the courts appointing ~~them~~ **the receivers** may direct."

Page 472, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 91. IC 34-6-2-103, AS AMENDED BY P.L.95-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 103. (a) "Person", for purposes of IC 34-14, has the meaning set forth in IC 34-14-1-13.

~~(b) "Person", for purposes of IC 34-19-2, has the meaning set forth in IC 35-41-1.~~

~~(c)~~ (b) "Person", for purposes of IC 34-24-4, means:

- (1) an individual;
- (2) a governmental entity;
- (3) a corporation;
- (4) a firm;
- (5) a trust;
- (6) a partnership; or
- (7) an incorporated or unincorporated association that exists under or is authorized by the laws of this state, another state, or a foreign country.

~~(d)~~ (c) "Person", for purposes of IC 34-26-2, includes individuals at least eighteen (18) years of age and emancipated minors.

~~(e)~~ (d) "Person", for purposes of IC 34-26-4, has the meaning set forth in IC 35-41-1-22.

~~(f)~~ (e) "Person", for purposes of IC 34-30-5, means any of the following:

- (1) An individual.
- (2) A corporation.
- (3) A partnership.
- (4) An unincorporated association.
- (5) The state (as defined in IC 34-6-2-140).
- (6) A political subdivision (as defined in IC 34-6-2-110).
- (7) Any other entity recognized by law.

~~(g)~~ (f) "Person", for purposes of IC 34-30-6, means an individual, a

corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity that:

(1) has qualifications or experience in:

(A) storing, transporting, or handling a hazardous substance or compressed gas;

(B) fighting fires;

(C) emergency rescue; or

(D) first aid care; or

(2) is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

~~(f)~~ (g) "Person", for purposes of IC 34-30-18, includes:

(1) an individual;

(2) an incorporated or unincorporated organization or association;

(3) the state of Indiana;

(4) a political subdivision (as defined in IC 36-1-2-13);

(5) an agency of the state or a political subdivision; or

(6) a group of such persons acting in concert.

~~(f)~~ (h) "Person", for purposes of sections 42, 43, 69, and 95 of this chapter, means an individual, an incorporated or unincorporated organization or association, or a group of such persons acting in concert.

~~(f)~~ (i) "Person" for purposes of IC 34-30-10.5, means the following:

(1) A political subdivision (as defined in IC 36-1-2-13).

(2) A volunteer fire department (as defined in IC 36-8-12-2).

(3) An employee of an entity described in subdivision (1) or (2) who acts within the scope of the employee's responsibilities.

(4) A volunteer firefighter (as defined in IC 36-8-12-2) who is acting for a volunteer fire department."

Page 473, between lines 30 and 31, begin a new paragraph and insert:

"SECTION 94. IC 34-26-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In addition to the injunctions and restraining orders discussed in this article, the following statutes also contain provisions concerning injunctions or restraining orders:

(1) ~~IC 34-19-1~~ **IC 32-30-6** (governing nuisance actions).

(2) ~~IC 34-19-2~~ **IC 32-30-7** (governing actions for indecent nuisance).

1 (3) IC 34-24-2 (governing civil remedies for racketeering
2 activities).".

3 Page 474, line 8, delete "IC 32-34-7-2" and insert "**IC 32-33-7-2**".

4 Page 474, line 13, delete "IC 32-35-1-29" and insert "**IC**
5 **32-34-1-29**".

6 Page 474, line 21, delete "IC 32-34-7-2" and insert "**IC 32-33-7-2**".

7 Page 474, between lines 22 and 23, begin a new paragraph and
8 insert:

9 "SECTION 102. IC 34-36-5-2 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. In actions for the
11 recovery of property, the jury must make the assessments required
12 under ~~IC 34-21-10~~ **IC 32-35-2-35**".

13 Page 474, between lines 27 and 28, begin a new paragraph and
14 insert:

15 "SECTION 104. IC 34-49-3-1 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. ~~When~~ **If** a suit is
17 brought:

18 (1) in replevin; **and**

19 (2) against an officer who issued a writ of attachment or execution
20 under **IC 32-35-2-26** (or IC 34-21-6-1 or IC 34-2-4-1 before ~~its~~
21 **their** repeal);

22 the officer may demand a bond from the attachment or execution
23 plaintiff to indemnify the officer in the replevin suit.

24 SECTION 105. IC 34-54-10-1 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Judgments in actions
26 concerning the recovery of the possession of personal property are
27 governed by ~~IC 34-21-9~~ **IC 32-35-2-33 and IC 32-35-2-34**".

28 Page 474, between lines 33 and 34, begin a new paragraph and
29 insert:

30 "SECTION 108. IC 35-50-5-3 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as
32 provided in subsection (i), in addition to any sentence imposed under
33 this article for a felony or misdemeanor, the court may, as a condition
34 of probation or without placing the person on probation, order the
35 person to make restitution to the victim of the crime, the victim's estate,
36 or the family of a victim who is deceased. The court shall base its
37 restitution order upon a consideration of:

38 (1) property damages of the victim incurred as a result of the

1 crime, based on the actual cost of repair (or replacement if repair
2 is inappropriate);

3 (2) medical and hospital costs incurred by the victim (before the
4 date of sentencing) as a result of the crime;

5 (3) earnings lost by the victim (before the date of sentencing) as
6 a result of the crime including earnings lost while the victim was
7 hospitalized or participating in the investigation or trial of the
8 crime; and

9 (4) funeral, burial, or cremation costs incurred by the family or
10 estate of a homicide victim as a result of the crime.

11 (b) A restitution order under subsection (a) or (i) is a judgment lien
12 that:

13 (1) attaches to the property of the person subject to the order;

14 (2) may be perfected;

15 (3) may be enforced to satisfy any payment that is delinquent
16 under the restitution order by the person in whose favor the order
17 is issued or the person's assignee; and

18 (4) expires;

19 in the same manner as a judgment lien created in a civil proceeding.

20 (c) When a restitution order is issued under subsection (a), the
21 issuing court may order the person to pay the restitution, or part of the
22 restitution, directly to the victim services division of the Indiana
23 criminal justice institute in an amount not exceeding:

24 (1) the amount of the award, if any, paid to the victim under
25 IC 5-2-6.1; and

26 (2) the cost of the reimbursements, if any, for emergency services
27 provided to the victim under IC 16-10-1.5 (before its repeal) or
28 IC 16-21-8.

29 The victim services division of the Indiana criminal justice institute
30 shall deposit the restitution received under this subsection in the
31 violent crime victims compensation fund established by IC 5-2-6.1-40.

32 (d) When a restitution order is issued under subsection (a) or (i), the
33 issuing court shall send a certified copy of the order to the clerk of the
34 circuit court in the county where the felony or misdemeanor charge was
35 filed. The restitution order must include the following information:

36 (1) The name and address of the person that is to receive the
37 restitution.

38 (2) The amount of restitution the person is to receive.

1 Upon receiving the order, the clerk shall enter and index the order in
 2 the circuit court judgment docket in the manner prescribed by
 3 IC 33-17-2-3. The clerk shall also notify the department of insurance
 4 of an order of restitution under subsection (i).

5 (e) An order of restitution under subsection (a) or (i) does not bar a
 6 civil action for:

7 (1) damages that the court did not require the person to pay to the
 8 victim under the restitution order but arise from an injury or
 9 property damage that is the basis of restitution ordered by the
 10 court; and

11 (2) other damages suffered by the victim.

12 (f) Regardless of whether restitution is required under subsection (a)
 13 as a condition of probation or other sentence, the restitution order is not
 14 discharged by the completion of any probationary period or other
 15 sentence imposed for a felony or misdemeanor.

16 (g) A restitution order under subsection (a) or (i) is not discharged
 17 by the liquidation of a person's estate by a receiver under **IC 32-30-5**
 18 **(or IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6, or IC 34-1-12,**
 19 **and or IC 34-2-7 before their repeal).**

20 (h) The attorney general may pursue restitution ordered by the court
 21 under subsections (a) and (c) on behalf of the victim services division
 22 of the Indiana criminal justice institute established under IC 5-2-6-8.

23 (i) The court may order the person convicted of an offense under
 24 IC 35-43-9 to make restitution to the victim of the crime. The court
 25 shall base its restitution order upon a consideration of the amount of
 26 money that the convicted person converted, misappropriated, or
 27 received, or for which the convicted person conspired. The restitution
 28 order issued for a violation of IC 35-43-9 must comply with
 29 subsections (b), (d), (e), and (g), and is not discharged by the
 30 completion of any probationary period or other sentence imposed for
 31 a violation of IC 35-43-9.

32 SECTION 109. IC 35-50-5-4, AS AMENDED BY P.L.1-1999,
 33 SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2002]: Sec. 4. (a) This section applies only:

35 (1) if the county in which a criminal proceeding was filed adopts
 36 an ordinance under IC 36-2-13-15; and

37 (2) to a person who is sentenced under this article for a felony or
 38 a misdemeanor.

(b) At the time the court imposes a sentence, the court may order the person to execute a reimbursement plan as directed by the court and make repayments under the plan to the county for the costs described in IC 36-2-13-15.

(c) The court shall fix an amount under this section that:

(1) may not exceed an amount the person can or will be able to pay;

(2) does not harm the person's ability to reasonably be self-supporting or to reasonably support any dependent of the person; and

(3) takes into consideration and gives priority to any other restitution, reparation, repayment, costs, fine, or child support obligations the person is required to pay.

(d) When an order is issued under this section, the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3.

(e) An order under this section is not discharged:

(1) by the completion of a sentence imposed for a felony or misdemeanor; or

(2) by the liquidation of a person's estate by a receiver under **IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, and IC 34-48-6 before their repeal).**".

Page 486, line 20, delete "IC 32-35-1" and insert "**IC 32-34-1**".

Page 486, line 25, delete "IC 32-35-1" and insert "**IC 32-34-1**".

Page 489, line 26, delete "IC 22-9.5;".

- 1 Page 489, line 29, after "IC 32-15;" insert "IC 34-6-2-7;
- 2 IC 34-6-2-66; IC 34-6-2-68; IC 34-6-2-74; IC 34-6-2-107;
- 3 IC 34-6-2-121; IC 34-6-2-125; IC 34-6-2-126; IC 34-6-2-149;".
- 4 Renumber all SECTIONS consecutively.
 (Reference is to SB 57 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 0.

Bray

Chairperson